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Chapter No. 473

19/SS02/R802SG

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## ***SENATE BILL NO. 2576***

Originated in Senate Ling Welch Secretary

SENATE BILL NO. 2576

AN ACT TO AMEND SECTION 97-35-47, MISSISSIPPI CODE OF 1972, AS AMENDED BY SECTION 16 OF SENATE BILL NO. 2480, 2019 REGULAR SESSION, TO PROVIDE THAT THE FALSE REPORT OF CHILD ABUSE OR NEGLECT TO THE DEPARTMENT OF CHILD PROTECTION SERVICES SHALL BE PUNISHABLE AS A MISDEMEANOR; TO AMEND SECTIONS 43-21-257, AS AMENDED BY SECTION 12 OF SENATE BILL NO. 2480, 2019 REGULAR SESSION, AND 43-21-261, AS AMENDED BY SECTION 2 OF SENATE BILL NO. 2480, 2019 REGULAR SESSION, MISSISSIPPI CODE OF 1972, TO REVISE THE APPROPRIATE RELEASE OF THE IDENTITY OF A REPORTER WHO KNOWINGLY REPORTED A FALSE ALLEGATION OF CHILD ABUSE OR NEGLECT, AND TO CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES; TO AMEND SECTION 43-21-353, MISSISSIPPI CODE OF 1972, AS AMENDED BY SECTION 5 OF HOUSE BILL NO. 571, 2019 REGULAR SESSION, SECTION 1 OF HOUSE BILL NO. 1117, 2019 REGULAR SESSION, AND SECTION 3 OF SENATE BILL NO. 2840, 2019 REGULAR SESSION, TO ALLOW A LIMITED RELEASE OF OTHERWISE CONFIDENTIAL INFORMATION CONCERNING A REPORTER WHO KNOWINGLY MADE A FALSE ALLEGATION OF ABUSE OR NEGLECT AND TO CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 97-35-47, Mississippi Code of 1972, as amended by Section 16 of Senate Bill No. 2480, 2019 Regular Session, is amended as follows:

97-35-47. It shall be unlawful for any person to report a crime or any element of a crime, including an allegation of child

abuse or neglect, to any law enforcement agency or officer, the Department of Child Protection Services, or any officer of any court, by any means, knowing that \* \* \* the report is false. A violation of this section shall be punishable by imprisonment in the county jail not to exceed one (1) year or by fine not to exceed Five Thousand Dollars (\$5,000.00), or both. In addition to any fine and imprisonment, and upon proper showing made to the court, the defendant shall be ordered to pay as restitution to the law enforcement agency reimbursement for any reasonable costs directly related to the investigation of the falsely reported crime and the prosecution of any person convicted under this section.

A report is false under this section when it is unsupported by any credible evidence and the person intentionally submitted the report knowing it was false.

**SECTION 2.** Section 43-21-257, Mississippi Code of 1972, as amended by Section 12 of Senate Bill No. 2480, 2019 Regular Session, is amended as follows:

43-21-257. (1) Unless otherwise provided in this section, any record involving children, including valid and invalid complaints, and the contents thereof maintained by the Department of Human Services or the Department of Child Protection Services, or any other state agency, shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(2) The Office of Youth Services shall maintain a state central registry containing the number and disposition of all cases together with such other useful information regarding those cases as may be requested and is obtainable from the records of the youth court. The Office of Youth Services shall annually publish a statistical record of the number and disposition of all cases, but the names or identity of any children shall not be disclosed in the reports or records. The Office of Youth Services shall adopt such rules as may be necessary to carry out this subsection. The central registry files and the contents thereof shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry shall be subject to the penalty in Section 43-21-267. The youth court shall furnish, upon forms provided by the Office of Youth Services, the necessary information, and these completed forms shall be forwarded to the Office of Youth Services. The Department of Human Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation or release of information on the central registry under this section and any other applicable section of this code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously

performed such a violation, said employee shall not be exempt from civil liability in this regard.

(3) The Department of \* \* \* Child Protection Services shall maintain a state central registry on neglect and abuse cases containing (a) the name, address and age of each child, (b) the nature of the harm reported, (c) the name and address of the person responsible for the care of the child, and (d) the name and address of the substantiated perpetrator of the harm reported. "Substantiated perpetrator" shall be defined as an individual who has committed an act(s) of sexual abuse or physical abuse that would otherwise be deemed as a felony or any child neglect that would be deemed as a threat to life \* \* \*. A name is to be added to the registry only based upon a criminal conviction or an adjudication by a youth court judge or court of competent jurisdiction, ordering that the name of the perpetrator be listed on the central registry \* \* \*. The central registry shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry without following the rules and administrative procedures of the department shall be subject to the penalty in Section 43-21-267. The Department of \* \* \* Child Protection Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation \* \* \* or release of information on the central registry under this section and any other applicable section

of \* \* \* this code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department \* \* \* pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.

(4) The Mississippi State Department of Health may release the findings of investigations into allegations of abuse within licensed day care centers made under the provisions of Section 43-21-353(8) to any parent of a child who is enrolled in the day care center at the time of the alleged abuse or at the time the request for information is made. The findings of any such investigation may also be released to parents who are considering placing children in the day care center. No information concerning those investigations may contain the names or identifying information of individual children.

The Department of Health shall not be held civilly liable for the release of information on any findings, recommendations or actions taken pursuant to investigations of abuse that have been conducted under Section 43-21-353(8).

**SECTION 3.** Section 43-21-261, Mississippi Code of 1972, as amended by Section 2 of Senate Bill No. 2480, 2019 Regular Session, is amended as follows:

43-21-261. (1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff or officials of the youth court, a guardian ad litem appointed to a child by the court, or a Court-Appointed Special Advocate (CASA) volunteer \* \* \* who may be assigned in an abuse and neglect case, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety \* \* \*, the functioning of the youth court, or to identify a person who knowingly made a false allegation of child abuse or neglect, and then only to the following persons:

(a) The judge of another youth court or member of another youth court staff;

(b) The court of the parties in a child custody or adoption cause in another court;

(c) A judge of any other court or members of another court staff, including the chancery court that ordered a forensic interview;

(d) Representatives of a public or private agency providing supervision or having custody of the child under order of the youth court;

(e) Any person engaged in a bona fide research purpose, provided that no information identifying the subject of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the judge gives prior written approval, and the child, through his or her representative, gives permission to release the information;

(f) The Mississippi Department of Employment Security, or its duly authorized representatives, for the purpose of a child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed;

(g) \* \* \* Any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health, safety or well-being of a child and that such disclosure is in the best interests of the child or an adult who was formerly the subject of a youth court delinquency proceeding \* \* \*;

(h) A person who was the subject of a knowingly made false allegation of child abuse or neglect which has resulted in a conviction of a perpetrator in accordance with Section 97-35-47 or which allegation was referred by the Department of Child Protection Services to a prosecutor or law enforcement official in accordance with the provisions of Section 43-21-353(4).



Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child convicted as an adult.

(2) Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation \* \* \* relevant to a matter to be heard by a youth court, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person. The attorney for the parent, guardian or custodian of the child, upon request, shall be provided a copy of any record, report or investigation \* \* \* relevant to a matter to be heard by a youth court, but the

identity of the reporter must be redacted and the name of any other person must also be redacted if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life, safety or well-being of the person. A record provided to the attorney under this section \* \* \* must remain in the attorney's control and the attorney may not provide copies or access to another person or entity without prior consent of a court with appropriate jurisdiction.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

(5) (a) The youth court prosecutor or prosecutors, the county attorney, the district attorney, the youth court defender or defenders, or any attorney representing a child shall have the right to inspect and copy any law enforcement record involving children.

(b) The Department of \* \* \* Child Protection Services shall disclose to a county prosecuting attorney or district attorney any and all records resulting from an investigation into suspected child abuse or neglect when the case has been referred by the Department of \* \* \* Child Protection Services to the county

prosecuting attorney or district attorney for criminal prosecution.

(c) Agency records made confidential under the provisions of this section may be disclosed to a court of competent jurisdiction.

(d) Records involving children shall be disclosed to the Division of Victim Compensation of the Office of the Attorney General upon the division's request without order of the youth court for purposes of determination of eligibility for victim compensation benefits.

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of \* \* \* Child Protection Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, or a public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.

(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.

(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, for any violation of Section 41-29-139(a)(1) or for any violation of Section 63-11-30, shall not be held confidential and shall be made available to the public.

(10) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.

(11) The victim of an offense committed by a child who is the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.

(12) A classification hearing officer of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as provided in Section 47-7-17, shall have the right to

inspect such records when the offender becomes eligible for parole.

(13) The youth court shall notify the Department of Public Safety of the name, and any other identifying information such department may require, of any child who is adjudicated delinquent as a result of a violation of the Uniform Controlled Substances Law.

(14) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.

(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(16) The Administrative Office of Courts may, in its discretion, disclose to the Department of Public Safety any or all

of the information involving children contained in the office's youth court data management system known as Mississippi Youth Court Information Delivery System or "MYCIDS."

(17) The youth courts of the state shall disclose to the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose. The disclosure prescribed in this subsection shall not require a court order and shall be made in sortable, electronic format where possible. The PEER Committee may seek the assistance of the Administrative Office of Courts in seeking this information. The PEER Committee shall not disclose the identities of any youth who have been adjudicated in the youth courts of the state and shall only use the disclosed information for the purpose of monitoring the effectiveness and efficiency of programs established to assist adjudicated youth, and to ascertain the incidence of adjudicated youth who become adult offenders.

(18) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law

enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(19) In every case \* \* \* of child abuse or neglect \* \* \*, if a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In such cases \* \* \*, the following information may be released by the Mississippi Department of \* \* \* Child Protection Services: \* \* \* the cause of the circumstances regarding the fatality or medically serious or critical physical condition; the age and gender of the child; information describing any previous reports of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition; the result of any such investigations; and the services provided by and actions of the state on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition.

(20) Any member of a foster care review board designated by the Department of \* \* \* Child Protection Services shall have the right to inspect youth court records relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.

(21) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further

order of the youth court in any administrative or due process hearing held, pursuant to Section 43-21-257, by the Department of \* \* \* Child Protection Services for individuals whose names will be placed on the central registry as substantiated perpetrators.

(22) The Department of Child Protection Services may disclose records involving children to the following:

(a) A foster home, residential child-caring agency or child-placing agency to the extent necessary to provide such care and services to a child;

(b) An individual, agency or organization that provides services to a child or the child's family in furtherance of the child's permanency plan to the extent necessary in providing those services;

(c) Health and mental health care providers of a child to the extent necessary for the provider to properly treat and care for the child;

(d) An educational institution or educational services provider where the child is enrolled or where enrollment is anticipated to the extent necessary for the school to provide appropriate services to the child; and

(e) Any other state agency if the disclosure is necessary to the department in fulfilling its statutory responsibilities in protecting the best interests of the child.



**SECTION 4.** Section 43-21-353, Mississippi Code of 1972, as amended by Section 5 of House Bill No. 571, 2019 Regular Session, Section 1 of House Bill No. 1117, 2019 Regular Session, and Section 3 of Senate Bill No. 2840, 2019 Regular Session, is amended as follows:

43-21-353. (1) Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee or any other person having reasonable cause to suspect that a child is a neglected child \* \* \*, an abused child, or a victim of commercial sexual exploitation or human trafficking shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing to the Department of \* \* \* Child Protection Services, and immediately a referral shall be made by the Department of \* \* \* Child Protection Services to the youth court intake unit, which unit shall promptly comply with Section 43-21-357. In the course of an investigation, at the initial time of contact with the individual(s) about whom a report has been made under this Youth Court Act or with the individual(s) responsible for the health or welfare of a child about whom a report has been made under this chapter, the Department of \* \* \* Child Protection Services shall inform the individual of the specific complaints or allegations made against the individual. Consistent with subsection (4), the

identity of the person who reported his or her suspicion shall not be disclosed at that point. Where appropriate, the Department of \* \* \* Child Protection Services shall additionally make a referral to the youth court prosecutor.

Upon receiving a report that a child has been sexually abused, is a victim of commercial sexual exploitation or human trafficking or has been burned, tortured, mutilated or otherwise physically abused in such a manner as to cause serious bodily harm, or upon receiving any report of abuse that would be a felony under state or federal law, the Department of \* \* \* Child Protection Services shall immediately notify the law enforcement agency in whose jurisdiction the abuse occurred \* \* \*. Within forty-eight (48) hours, \* \* \* the department must notify the appropriate prosecutor and the Statewide Human Trafficking Coordinator. The department \* \* \* shall have the duty to provide the law enforcement agency all the names and facts known at the time of the report; this duty shall be of a continuing nature. The law enforcement agency and the department \* \* \* shall investigate the reported abuse immediately and shall file a preliminary report with the appropriate prosecutor's office within twenty-four (24) hours and shall make additional reports as new or additional information or evidence becomes available. The department \* \* \* shall advise the clerk of the youth court and the youth court prosecutor of all cases of abuse reported to the department within seventy-two (72) hours and shall update such

report as information becomes available. In addition, if the Department of Child Protection Services determines that a parent or other person responsible for the care or welfare of an abused or neglected child maintains active duty status within the military, the department shall notify the applicable military installation family advocacy program that there is an allegation of abuse or neglect that relates to that child.

(2) Any report \* \* \* shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries \* \* \*, any other information that might be helpful in establishing the cause of the injury, and the identity of the perpetrator.

(3) The Department of \* \* \* Child Protection Services shall maintain a statewide incoming wide-area telephone service or similar service for the purpose of receiving reports of suspected cases of child abuse, commercial sexual exploitation or human trafficking; provided that any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer or public or private school employee who is required to report under subsection (1) of this section shall report in the manner required in subsection (1).

(4) Reports of abuse \* \* \*, neglect and commercial sexual exploitation or human trafficking made under this chapter and the identity of the reporter are confidential except when the court in which the investigation report is filed, in its discretion, determines the testimony of the person reporting to be material to a judicial proceeding or when the identity of the reporter is released to law enforcement agencies and the appropriate prosecutor pursuant to subsection (1). Reports made under this section to any law enforcement agency or prosecutorial officer are for the purpose of criminal investigation and prosecution only and no information from these reports may be released to the public except as provided by Section 43-21-261. Disclosure of any information by the prosecutor shall be according to the Mississippi Uniform Rules of Circuit and County Court Procedure. The identity of the reporting party shall not be disclosed to anyone other than law enforcement officers or prosecutors without an order from the appropriate youth court. Any person disclosing any reports made under this section in a manner not expressly provided for in this section or Section 43-21-261 shall be guilty of a misdemeanor and subject to the penalties prescribed by Section 43-21-267. Notwithstanding the confidentiality of the reporter's identity under this section, the Department of Child Protection Services may disclose a reporter's identity to the appropriate law enforcement agency or prosecutor if the department has reason to suspect the reporter has made a fraudulent report,

and the Department of Child Protection Services must provide to the subject of the alleged fraudulent report written notification of the disclosure.

(5) All final dispositions of law enforcement investigations described in subsection (1) of this section shall be determined only by the appropriate prosecutor or court. All final dispositions of investigations by the Department of \* \* \* Child Protection Services as described in subsection (1) of this section shall be determined only by the youth court. Reports made under subsection (1) of this section by the Department of \* \* \* Child Protection Services to the law enforcement agency and to the district attorney's office shall include the following, if known to the department:

- (a) The name and address of the child;
- (b) The names and addresses of the parents;
- (c) The name and address of the suspected perpetrator;
- (d) The names and addresses of all witnesses, including the reporting party if a material witness to the abuse;

(e) A brief statement of the facts indicating that the child has been abused, including whether the child experienced commercial sexual exploitation or human trafficking, and any other information from the agency files or known to the family protection worker or family protection specialist making the investigation, including medical records or other records, which

may assist law enforcement or the district attorney in investigating and/or prosecuting the case; and

(f) What, if any, action is being taken by the Department of \* \* \* Child Protection Services.

(6) In any investigation of a report made under this chapter of the abuse or neglect of a child as defined in Section 43-21-105(1) or (m), the Department of \* \* \* Child Protection Services may request the appropriate law enforcement officer with jurisdiction to accompany the department in its investigation, and in such cases the law enforcement officer shall comply with such request.

(7) Anyone who willfully violates any provision of this section shall be, upon being found guilty, punished by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in jail not to exceed one (1) year, or both.


(8) If a report is made directly to the Department of \* \* \* Child Protection Services that a child has been abused or neglected or experienced commercial sexual exploitation or human trafficking in an out-of-home setting, a referral shall be made immediately to the law enforcement agency in whose jurisdiction the abuse occurred and the department shall notify the district attorney's office and the Statewide Human Trafficking Coordinator within forty-eight (48) hours of such report. The Department of \* \* \* Child Protection Services shall investigate the out-of-home setting report of abuse or neglect to determine

whether the child who is the subject of the report, or other children in the same environment, comes within the jurisdiction of the youth court and shall report to the youth court the department's findings and recommendation as to whether the child who is the subject of the report or other children in the same environment require the protection of the youth court. The law enforcement agency shall investigate the reported abuse immediately and shall file a preliminary report with the district attorney's office within forty-eight (48) hours and shall make additional reports as new information or evidence becomes available. If the out-of-home setting is a licensed facility, an additional referral shall be made by the Department of \* \* \* Child Protection Services to the licensing agency. The licensing agency shall investigate the report and shall provide the department \* \* \*, the law enforcement agency and the district attorney's office with their written findings from such investigation as well as that licensing agency's recommendations and actions taken.

(9) If a child protective investigation does not result in an out-of-home placement, a child protective investigator must provide information to the parent or guardians about community service programs that provide respite care, counseling and support for children who have experienced commercial sexual exploitation or human trafficking, voluntary guardianship or other support services for families in crisis.

SECTION 5. This act shall take effect and be in force from  
and after July 1, 2019.

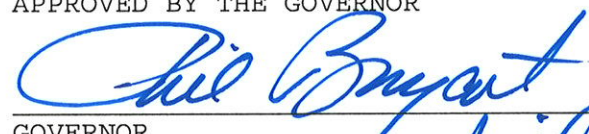
PASSED BY THE SENATE  
March 28, 2019

  
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PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 28, 2019

  
\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

  
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GOVERNOR

*April 16, 2019*

*10:20 AM*